Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Service	)	
	)	

REPLY COMMENTS OF CELPAGE, INC.

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SUMMARY

The comments in this Calling Party Pays ("CPP") rulemaking proceeding focus mainly on three topics: (1) Caller Notification; (2) Rate Regulation; and (3) Billing and Collection. One commenter argues that CPP should not be applied to paging services.

CPP must be applied equitably to all types of Commercial Mobile Radio Services ("CMRS"), including paging. Because all types of CMRS services are competitive, and because a primary goal of this proceeding is to remove obstacles to the growth of all CMRS, the FCC should apply CPP to all CMRS services, including paging. Asymmetrical CPP regulation could severely harm the U.S. paging industry.

Celpage agrees with the vast majority of commenters who support a national, uniform policy of CPP customer notification. Celpage also supports a verbal CPP warning that details the charges a CPP caller will incur. A detailed notification is needed to educate callers, and to prevent backlash against CPP.

Most commenters argue that CPP rates charged by CMRS carriers should not be federally regulated. Celpage agrees with these commenters, but at the same time it advocates federal rate guidelines to ensure that a paging carrier's share of CPP revenue, and the rates established for CPP calls to paging units, are just, reasonable, and nondiscriminatory.

Celpage concurs with the commenters who favor FCC-mandated CPP billing and collection by originating carriers. Due to their lack of necessary resources, and the large number of bills that would be produced by CPP, it would be cost-prohibitive for paging carriers to perform billing and collection services. Conversely, originating carriers have the necessary resources to economically and efficiently perform billing and collection services.

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To: The Commission

REPLY COMMENTS OF CELPAGE, INC.

Celpage, Inc. ("Celpage"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby submits these Reply Comments in response to the Commission's July 7, 1999, Declaratory Ruling and Notice of Proposed Rule Making ("Notice") in the above-referenced proceeding. In support hereof, the following is respectfully shown:

I. Summary of Comments

The Commission solicited comments on various calling party pays ("CPP") issues in order to facilitate the wider availability of CPP. Notice at ¶ 6. Although many different entities submitted comments in this proceeding, the majority of the commenters were two-way Commercial Mobile Radio Service ("CMRS") providers,[1] Local Exchange Carriers ("LECS"), and various advocacy groups representing these industries. Celpage was the only commenter that addressed CPP issues as they relate to the paging industry.[2]

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[1] The commenters included a number of wireline telecommunications carriers that also provide CMRS.

[2] As discussed below, SBC Communications, Inc. ("SBC") stated a brief, general opinion as to whether CPP regulations should apply to paging providers. SBC did not, however, discuss how the proposed CPP rules would affect the paging industry. The Personal Communications Industry Association ("PCIA") briefly mentioned paging in its comments, but PCIA did not specifically address the unique concerns of the paging industry.

The commenters focused mainly on three topics: (1) Caller Notification; (2) Rate Regulation; and (3) Billing and Collection. The commenters almost unanimously supported some form of nationwide, uniform CPP caller notification. Commenters were also fairly united in their opposition to federal regulation of the CPP rates CMRS providers may charge. Commenters were divided, however, on the issue of whether LECs should be required to provide CPP billing and collection services. Not surprisingly, most of the CMRS commenters favored federally mandated LEC billing and collection, while the LECs were universally opposed.

II. CPP Must be Applied to all CMRS

With the exception of Celpage, the only party that submitted comments related to the paging industry was SBC. SBC argued that CPP should not be applied to paging services because these services "do not compete with two-way voice services provided over the wireline local exchange network [and] applying CPP to paging service is not likely to increase or decrease the number of calls made to pagers . . . ." SBC Comments at p.7.

Celpage strongly disagrees with SBC's argument, which runs contrary to FCC policy, and, if put into practice, could severely harm the U.S paging industry. Contrary to SBC's contention, it is crucial that CPP rules be equitably applied to all types of CMRS, including paging carriers that elect to offer this service.

The Commission has long held that all CMRS carriers, including paging providers, offer competing services and must be regulated in a similar manner in order to avoid "the potentially distorting effects of asymmetrical regulation." Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, 9 FCC Rcd. 7988 at ¶¶ 11-12 (1994) ("Third

Report and Order"). As SBC itself acknowledges, CMRS is emerging as an alternative to two-way local wireline service. SBC Comments at 4-5, n.5.

Because all CMRS services are at least potentially competitive services, and because one of the main goals in this proceeding is to remove the obstacles to the growth of all CMRS (Notice at ¶¶ 4-5), the Commission is bound to apply CPP comprehensively and equitably. Hence, the Commission should not implement CPP rules in a manner that would favor two-way CMRS providers, to the detriment of paging carriers.

As Celpage explained in its Comments, the Argentine government's asymmetrical adoption of CPP rules for cellular services, but not paging services, resulted in a dramatic increase in cellular subscribership, while paging subscribership has since fallen precipitously. Celpage Comments at 5. The Argentine paging industry has been crippled as a result. Id. This example illustrates why the Commission should honor its policy of CMRS regulatory symmetry, by applying CPP rules equitably to all CMRS providers, including paging carriers, or risk crippling the U.S. paging industry.[3]

III. Caller Notification Should be Applied Universally

The commenters were nearly unanimous in their support of a national, uniform policy for CPP customer notification. There was also agreement that the Commission has authority to implement such a policy pursuant to Sections 201(b) and 332 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §§ 201(b), 332(c)(3)(A). See, e.g., Comments of GTE

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[3] It bears mentioning that SBC owns a number of subsidiaries that provide two-way CMRS, including: Southwestern Bell Mobile Systems, Southwestern Bell Wireless, Pacific Bell Wireless, Cellular Communications of Puerto Rico, Inc., and Southern New England Telephone Wireless Services. See SBC Comments at n.1. It is not surprising, therefore, that SBC would advocate a type of asymmetrical CPP regulation that would directly benefit its two-way CMRS subsidiaries, to the detriment of competing paging carriers.

Service Corp. ("GTE") at pp. 15-16; Comments of AirTouch Communications, Inc. ("AirTouch") at pp. 40-42. The Public Utilities Commission of Ohio ("Ohio PUC"), however, objects to a national caller notification policy, to the extent that it would exclude state PUCs from exercising concurrent jurisdiction over non-rate consumer protection issues. Ohio PUC Comments at p. 9.

Celpage agrees with the Ohio PUC that a national uniform caller notification standard should not be adopted if it does not allow for concurrent state PUC jurisdiction over consumer protection issues. If the Commission implements such a nationwide plan, however, Celpage agrees with the vast majority of commenters that a comprehensive, uniform, notification plan should be implemented.

The commenters also generally agree that a verbal notification would be optimal, but there is disagreement as to the length and the content that should be contained within the notification. PCIA, for example, argues that a detailed rate notification would create a "long and complicated" message, and that because of the varying charges of an originating carrier, it would be "impossible to include exact cost information" in a notification message. PCIA Comments at pp. 28, 30. PCIA advocates a "simple nationwide notification policy that ensures callers are aware that they will be charged for a completed CPP call." PCIA Comments at p. 30. Pilgrim Telephone, Inc. ("Pilgrim"), on the other hand, favors a more comprehensive notification, wherein calling parties are provided with information regarding basic costs and additional charges, e.g. roaming, long distance, text dispatch, text massaging, and voice mail charges. Pilgrim Comments at p. 42. Pilgrim believes that providing comprehensive and accurate information will better educate consumers about CPP, and permit them to make informed CPP choices. Pilgrim Comments at pp. 42-44. In order to economize on the time, Pilgrim suggests that carriers be permitted to provide a

range of different types of announcements, which, for example, could include a brief notation of the per-minute airtime rate, as well as each per minute or per message rate that could apply to the call. Pilgrim Comments at p. 43.

PCIA's comments underscore Celpage's position that originating carriers, not paging providers, should be responsible for providing the CPP warnings. See Celpage Comments at p. 7. Paging carriers have no control over an originating carrier's facilities, and therefore only the originating carriers would be able to provide accurate information about their charges. PCIA is, therefore, incorrect in its assertion that exact cost information cannot be provided in a notification message. Originating carriers have databases containing cost information that would permit them to efficiently provide accurate and complete CPP cost notification to consumers. Moreover, because originating carriers have varying rates, it is all the more important that originating carriers provide the notification.

Celpage agrees with the Commission's tentative conclusion that "a notification that does not include rate information would be an ineffective means of providing callers with sufficient information to make an informed decision about placing a call to a CPP subscriber." Notice at ¶ 43. Accordingly, Celpage concurs with Pilgrim that detailed rate information should be provided in the notification messages, in order to avoid confusion among consumers. The more information provided to consumers, the less potential for backlash against CPP.

IV. Federal CPP Rate Regulation is Needed to Protect Competition

The commenters were nearly unanimous in their opposition to federal regulation of rates charged by CMRS carriers for the provision of CPP service. The common argument against federal rate regulation is that there is no "demonstrated need" for regulatory price intervention

(i.e. that no one can demonstrate at this time that direct competitive pressure on CPP rates will fail to protect calling parties). See, e.g, Comments of Nextel Communications, Inc. ("Nextel") at p. 11; Comments of the Cellular Telecommunications Industry Association ("CTIA") at p. 31.

Celpage does not disagree with the commenters regarding the specific issue of "capping the rates" CMRS providers may charge for CPP. Celpage submits, however, that federal rate guidelines are required to ensure that a paging carrier's share of CPP revenue, and the rates established for these calls, are just, reasonable, and nondiscriminatory. The Commission has authority to do this pursuant to Section 332(c)(1) of the Act, 47 U.S.C. § 332(c)(1).

There should be parity, for example, in the per-minute rates charged by paging carriers with those charged by cellular providers. Additionally, the division of CPP revenue between originating carriers and paging carriers must be equitable. Because ILECs have bottleneck control over the networks that originate and transport calls to paging networks, they have exclusive power to set the rates and percentages they will retain for CPP paging calls. If, for example, an ILEC decides to inequitably split revenue generated by CPP calls to paging units, paging providers would either have accept the inequitable split, or be forced to stop marketing CPP paging services.

As Sprint Corporation ("Sprint") averred, CPP "immediately loses its appeal if, for a one-minute call, [a CMRS provider] must pay the LEC 15-20 cents [of the 25 cents] collected from the CPP callers." Sprint Comments, p.8.[4] Without federal guidelines regarding the terms of the

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[4] Sprint's comments regarding the CPP revenue split were made in the context of its discussion of LEC billing for CPP services. Nonetheless, its comments serve to illustrate the point that many LECs retain an exorbitant amount of CPP revenue, to the detriment of CMRS carriers that choose to provide CPP. Because of the nature of CPP, the originating carrier will take a percentage of the revenue for each calling party billed. Due to the highly competitive nature of the paging industry, paging companies have a very low profit margin. Ergo, without federal rate guidelines, paging companies will receive less revenue under CPP than under the current system, which will result in few paging

CPP revenue split, paging providers will likely be forced out of the CPP marketplace, which would reduce consumers' service choices, in contravention of the goals of this proceeding. See Notice, ¶¶ 5-7.

V. Billing and Collection Must be Performed by Originating Carriers

The commenters were split over the issue of whether the FCC should require originating carriers to perform billing and collection services. Not surprisingly, CMRS carriers favored such a proposal, while the LECs were unanimously opposed.

The LECs generally argue that the FCC does not have jurisdiction to require originating carriers to perform CPP billing and collection services for CMRS providers, and that the market for CPP billing and collection is sufficiently competitive so that government intervention is not required. See, e.g., Comments of GTE at p.33; Comments of BellSouth Corporation ("BellSouth") at 3-9.

BellSouth argues that the Commission does not have jurisdiction to impose billing and collection requirements pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3). BellSouth contends that because this section only applies to ILECS, and does not address the provision of billing and collection by other originating carriers which may be "identically situated" with ILECs, any requirement by the Commission that ILECs only must provide CPP billing and collection services would be arbitrary and capricious. BellSouth Comments at 3-4. BellSouth further argues that the FCC may not look to ancillary jurisdiction under Sections 4(i) and 303(r) of the Act, 47 U.S.C. §§ 154(i), 303(r), for jurisdiction to mandate billing and collection by all originating carriers. BellSouth contends that the exercise of ancillary jurisdiction in this instance

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companies being able to offer CPP to their subscribers.

would conflict with Section 332(c)(e) of the Act, 47 U.S.C. § 332(c)(3), because billing and collection are subject to state jurisdiction. BellSouth further claims that, in any event, due to the competitive CMRS marketplace, and the existence of alternatives to LEC billing and collection, it is not necessary for the FCC to require LECs to provide CPP billing and collection services. BellSouth Comments at 8-14.

AirTouch argues that the Commission does have authority to require LEC billing and collection for CPP. AirTouch contends that Section 332(c)(3)(A) of the Act, 47 U.S.C. § 332(c)(3)(A), preempts state regulation of the entry of any CMRS. Hence, AirTouch argues that regulatory issues related to the entry of CMRS include the introduction of new CMRS services such as CPP, and are subject to federal jurisdiction; the exercise of ancillary jurisdiction would not conflict with Section 332. AirTouch Comments at 26. AirTouch further argues that ancillary jurisdiction would serve the statutory purpose of making efficient CMRS available "so far as possible, to all the people of the United States." AirTouch Comments at 29, citing 47 U.S.C. § 151.

Celpage disagrees with BellSouth's contention that the Commission does not have jurisdiction to require originating carriers to provide CPP billing and collection services. Section 251(c)(3) of the Act requires all ILECs to provide nondiscriminatory access to network elements "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . . " 47 U.S.C. § 251(c)(3). Section 3(29) of the Act states that the definition of a "network element" includes "information sufficient for billing and collection." 47 U.S.C. § 153(29). The U.S. Supreme Court has stated that the FCC has authority to enforce the provisions of Sections 251 and 252 of the Act. AT&T Corp. v. Iowa Utilites Board, 119 S. Ct. 721, 730 (1999). Accordingly, the

Commission has jurisdiction over ILEC billing and collection pursuant to these sections of the Act.

BellSouth's argument that it would be "arbitrary and capricious" for the FCC to require ILECs only to provide CPP billing and collection services pursuant to this section is ludicrous. The plain language of the statute shows that Congress clearly intended that Section 251(c) be applied only to ILECs. Should the Commission require ILECs to perform CPP billing and collection services, it would simply be serving the will of Congress. BellSouth, then, appears to be arguing that the Act itself is arbitrary and capricious.

Additionally, Celpage agrees with AirTouch that the Commission has legal authority to impose CPP billing and collection requirements on originating carriers pursuant to its ancillary jurisdiction under Sections 4(i) and 303(r) of the Act. Section 4(i) states that the Commission may "perform any and all acts, make such rules and regulations, and issue such special orders, not inconsistent with this Act, as may be necessary to the execution of its functions." 47 U.S.C. § 154(i); see also Iowa at 727-36. Section 303(r) states that the Commission may issue "such rules and regulations and prescribe such restrictions and conditions, not inconsistent with any law," [as the] "public convenience, interest, or necessity requires." 47 U.S.C. § 303(r)

Celpage agrees that the FCC's exercise of ancillary jurisdiction does not conflict with Section 332 of the Act, because, as stated above, the salient issue here is entry of a new CMRS service, CPP. Moreover, Celpage concurs with AirTouch that requiring originating carriers to provide CPP billing and collection services would serve the statutory purpose of making CMRS services widely available. See 47 U.S.C. § 151.

BellSouth argues that LEC billing and collection is unnecessary because products exist that can provide billing name and address information ("BNA"), which CMRS carriers can use for billing purposes. See BellSouth Comments, at pp.15-16. Even with the existence of these products, the performance of billing and collection is economically burdensome for paging companies.

Due to the brief period of calling time to a paging unit, most bills to CPP customers would be for small amounts. Consequently, the costs involved in producing and mailing the invoices would often exceed the amount of the bill itself. Hence, the costs of billing are simply too high relative to the small amount of revenue each bill represents.

Because of the small amount of each CPP paging bill, many customers would have incentives not to pay their bills. Under CPP paging, many customers in different locations would receive monthly bills for small amounts. Should even a small number of those customers refuse to pay, paging providers would either be stuck with unpaid bills, or be forced to absorb the high cost of collecting from these nonpaying customers.

Additionally, it is much more efficient and cost-effective for the originating carriers to perform billing and collection services. Originating carriers have databases containing customer information and accounts receivable, and they already bill for a number of services, including interexchange services. Hence, the costs to an originating carrier of billing CPP charges are merely incremental. Conversely, paging carriers have no ongoing relationship with originating carriers' subscribers, nor do they have access to those carriers' subscriber databases.

Accordingly, for CPP paging to be economically viable, originating carriers must perform billing and collection for paging providers at reasonable costs. It is crucial, therefore, that the

FCC require originating carriers to perform these functions. If, as the LECs suggest, CPP billing and collection arrangements are made voluntary, the refusal of one or more originating carriers to provide these services "in good faith" would likely stymie the implementation of CPP paging.

VI. Conclusion

For all the foregoing reasons, Celpage respectfully submits that the public interest would be served by the Commission adopting rules for the promotion of calling party pays services for paging carriers, in accordance with Celpage's Comments and Reply Comments.

Respectfully submitted,

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October 18, 1999

CERTIFICATE OF SERVICE

I, Rhonda M. Johnson, Legal Secretary for Joyce & Jacobs, Attorneys at Law, L.L.P., certifies that on the 18th day of October, 1999, copies of the foregoing Reply Comments of Celpage, Inc., in the Calling Party Pays Service Option in the Commercial Mobile Radio Service rule making proceeding, were sent, via first class U.S. mail, postage prepaid, to the following:

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